

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE BEAR STEARNS COMPANIES, INC.
SECURITIES, DERIVATIVE, AND ERISA
LITIGATION

08 M.D.L. No. 1963 (RWS)

OPINION

This Document Relates To:

Securities Action, 08 Civ. 2793 (RWS)

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A P P E A R A N C E S:

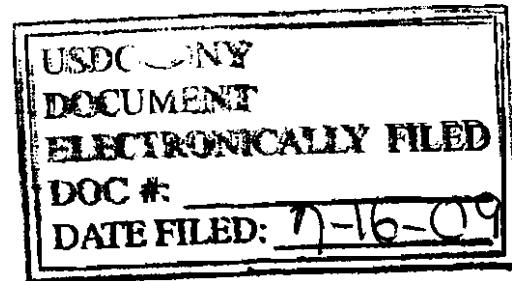
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Sweet, D.J.,

Plaintiffs Gilles Bransbourg ("Bransbourg") and Joseph Zicherman ("Zicherman") have both moved for reconsideration of the Court's Opinion of January 5, 2009, and Order of January 6, 2009, modified on January 23, 2009, consolidating their respective actions and appointing the State of Michigan Retirement Systems ("SMRS") lead plaintiff. See In re Bear Stearns Co., Inc. Sec., Derivative, & Employee Retirement Income Sec. Act ("ERISA") Litig., 08 M.D.L. No. 1963 (RWS), 2009 WL 50132 (S.D.N.Y. Jan. 5, 2009) ("January 5, 2009 Opinion"); In re Bear Stearns Co., Inc. Sec., Derivative, & ERISA Litig., 08 M.D.L. No. 1963 (RWS) (S.D.N.Y. Jan. 6, 2009) (the "Consolidation Order"). For the reasons stated below, both motions for reconsideration are denied.

I. BACKGROUND

In the January 5, 2009 Opinion, the Court consolidated several actions, including actions brought by Bransbourg and Zicherman, alleging violations of Sections 10(b) and 20(a) of the Exchange Act, as amended by the PSLRA, and Rule 10b-5 promulgated thereunder (the "Securities Actions"). In brief, the Securities Actions allege that Defendants issued materially

false and misleading statements regarding the Bear Stearns Companies, Inc.'s ("Bear Stearns" or the "Company") business and financial results, resulting in the trading of the Company's stock at artificially inflated prices from 2006 through March 14, 2008, the day after the collapse of Bear Stearns was made public. In the same Opinion, the Court appointed SMRS lead plaintiff of the Securities Actions, and Labaton Sucharow LLP ("Labaton Sucharow") and Berman DeValerio Pease Tabacco Burt & Pucillo ("Berman DeValerio") lead counsel.

On January 20, 2008, Bransbourg filed his motion for reconsideration of that part of the January 5, 2009 Opinion that appointed SMRS lead plaintiff representing all purchasers of Bear Stearns' securities, including the current and former employees of Bear Stearns that received, as a consequence of their employment with the Company and participation in its equity compensation plans, Restricted Stock Units ("RSUs") and/or Capital Appreciation Plan Units ("CAP Units") (the "Bransbourg Class").¹ The motion was marked fully submitted on February 18, 2009.

¹ Bransbourg also requested an order staying SMRS from filing a consolidated complaint in the Securities Actions pending determination of his reconsideration motion. Given that SMRS filed its Consolidated Class Action Amended Complaint in this action on February 27, 2009, that part of the motion is denied as moot.

On January 27, 2009, Zicherman filed a motion for an order correcting and modifying the January 5, 2009 Opinion and Consolidation Order to accurately reflect Zicherman's case as an individual action, and directing that Zicherman's case be coordinated, rather than consolidated with the other cases. In the event that its reconsideration request is denied, Zicherman asks that the Consolidation Order be amended to reflect Zicherman's rights as an individual plaintiff.

II. BOTH MOTIONS FOR RECONSIDERATION ARE DENIED

A. The Applicable Standard

"A motion for reconsideration is not a motion to reargue those issues already considered when a party does not like the way the original motion was resolved." Davey v. Dolan, 496 F. Supp. 2d 387, 389 (S.D.N.Y. 2007) (internal quotations and citation omitted). Therefore, "Local Rule 6.3 is to be narrowly construed and strictly applied in order to avoid repetitive arguments on issues that the court has fully considered." Abrahamson v. Bd. of Educ., 237 F. Supp. 2d 507, 510 (S.D.N.Y. 2002). To prevail on a motion for reconsideration, "the moving party must demonstrate controlling

law or factual matters put before the court on the underlying motion that the movant believes the court overlooked and that might reasonably be expected to alter the court's decision."

Parrish v. Sollecito, 253 F. Supp. 2d 713, 715 (S.D.N.Y. 2003). Alternatively, "[r]econsideration may be granted to correct clear error [or] prevent manifest injustice" Id.

B. Discussion

i. Bransbourg's Motion

According to Bransbourg, in appointing SMRS lead plaintiff to represent all purchasers of Bear Stearns' securities, including members of the Bransbourg Class, the Court failed to address Bransbourg's contention that SMRS lacks standing to assert claims on behalf of the Bransbourg Class. Bransbourg argues that SMRS's lack of standing to interpose claims on behalf of the Bransbourg class renders it *prima facie* inadequate to serve as lead plaintiff for the Bransbourg action, and, therefore, the Court's decision constituted legal error.

Without considering whether Bransbourg is correct that SMRS lacks standing to assert claims on its behalf, the Court is satisfied that there is no requirement under either the Private

Securities Litigation Reform Act of 1995 or the case law in this Circuit for a lead plaintiff to possess "standing to sue on every available cause of action." Hevesi v. Citigroup Inc., 366 F.3d 70, 82 (2d Cir. 2004) ("[B]ecause the PSLRA mandates that courts must choose a party who has, among other things, the largest financial stake in the outcome of the case, it is inevitable that, in some cases, the lead plaintiff will not have standing to sue on every claim."); see In re Fuwei Films Sec. Litig., 247 F.R.D. 432, 438 (S.D.N.Y. 2008) ("[T]he Second Circuit has held that there is no requirement that a court select as lead plaintiff only a movant with standing to assert every possible claim against every defendant, nor does the presumptive lead plaintiff fail to satisfy the typicality prong if he or she cannot assert every possible claim."); In re Initial Public Offering Sec. Litig., 214 F.R.D. 117, 123 (S.D.N.Y. 2002) (finding that any suggestion "that the court should cobble together a lead plaintiff group that has standing to sue on all possible causes of action . . . has been rejected repeatedly by courts in this Circuit and undermines the purpose of the PSLRA").

Nor does Bransbourg point to any controlling decisions or pertinent facts that the Court overlooked in its January 5,

2009 Opinion consolidating his case with the other securities actions and appointing SMRS lead plaintiff. Concluding that “[t]he claims asserted in the Bransbourg Action are identical to those asserted in the other Securities Actions and are based on the same statements made by Defendants during the same class period,” the Court found consolidation appropriate. Jan. 5, 2009 Opinion at *7. Because Bransbourg’s motion is simply a rehash of arguments that were made in opposition to consolidation, the motion for reconsideration is denied.

ii. Zicherman’s Motion

Zicherman seeks reversal of the Court’s consolidation of this action with the other securities actions based on the Court’s statement in the January 5, 2009 Opinion that “Plaintiff Zicherman alleges a class period limited to the week of March 10, 2008.” Jan. 5, 2009 Opinion at *2. This statement is not an accurate description of Zicherman’s claim, which is brought as an individual action, rather than a class action, and the January 5, 2009 Opinion and Consolidation Order shall be amended to reflect Zicherman’s action as such.

The error pointed to by Zicherman does not, however, warrant reconsideration of the Court’s determination to

consolidate his action with the other Securities Actions. In consolidating Zicherman's action, the Court concluded that consolidation was appropriate because "all of the cases alleging violations of the federal securities laws involve common questions of law and fact sufficient to warrant consolidation." Jan. 5, 2009 Opinion at *6. The fact that Zicherman brings his claim as an individual and not on behalf of a class does not alter this conclusion, and therefore his motion for reconsideration is denied.

As to Zicherman's request that the Consolidation Order be additionally amended to specifically list his rights as an individual plaintiff, the Court does not find such further amendment necessary at this time.

It is so ordered.

New York, NY
July 15, 2009



ROBERT W. SWEET
U.S.D.J.